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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 **HILDA L. SOLIS**,
17 Secretary of Labor,
18 United States Department of Labor,

19 Plaintiff,

20 v.

21 **CMR CLOTHING, INC. doing business as**
22 **COLOR ME RED**,

23 Defendant.

Case No.: CV 12-8068 CAS (JEMx)

CONSENT JUDGMENT

24 Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor
25 (“Secretary”), and Defendant CMR Clothing, Inc. doing business as Color Me Red (“De-
26 fendant”), have agreed to resolve the matters in controversy in this civil action and con-
27 sent to the entry of this Judgment in accordance herewith:

28 A. The Secretary has filed a Complaint alleging that the Defendant violated
provisions of Sections 15(a)(1), 29 U.S.C. § 215(a)(1) of the Fair Labor Standards Act of
1938, as amended (“FLSA”);

B. The Defendant has appeared by counsel and acknowledges receipt of a copy
of the Secretary’s Complaint;

C. The Defendant waives issuance and service of process and waives answer

1 and any defenses to the Secretary's Complaint;

2 D. The Secretary and Defendant waive Findings of Fact and Conclusions of
3 Law, and agree to the entry of this Consent Judgment in settlement of this action, with-
4 out further contest;

5 E. The Defendant admits that the Court has jurisdiction over the parties and
6 subject matter of this civil action and that venue lies in the Central District of California.

7 It is therefore, upon motion of the attorneys for the Secretary, and for cause
8 shown,

9 ORDERED, ADJUDGED, AND DECREED that the Defendant, its officers,
10 agents, servants, and employees and those persons in active concert or participation with
11 it who receive actual notice of this order (by personal service or otherwise) be, and they
12 hereby are, permanently enjoined and restrained from violating the provisions of Section
13 15(a)(1), 29 U.S.C. § 215(a)(1) of the Fair Labor Standards Act of 1938, as amended
14 ("FLSA"), in any of the following manners:

15 1) Defendant shall not, contrary to FLSA § 15(a)(1), 29 U.S.C. § 215(a)(1),
16 transport, offer for transportation, ship, deliver, or sell in commerce (or ship, deliver, or
17 sell with knowledge or reason to believe that shipment, delivery, or sale in commerce is
18 intended) goods in the production of which any employee (of the Defendant or other(s))
19 has been employed in violation of the FLSA's minimum wage (29 U.S.C. § 206) or
20 overtime pay provisions (29 U.S.C. § 207);

21 2) Defendant shall not fail to disgorge, from the gross proceeds of its having
22 sold or shipped in commerce goods that had been worked on by employees of CUI Sew-
23 ing, Inc. and Silver Apparel, Inc. who were not paid the minimum wage and overtime
24 required by the FLSA, 29 U.S.C. §§ 206 and 207, an amount sufficient to cover the back
25 wages due to these employees under the FLSA. The amount hereby found due to these
26 employees is \$28,609.77 for the period from February 10, 2012 through August 7, 2012.

27 The names of the employees to whom backwages are owed, and the gross back-
28 wage amount due to each is set forth on the attached Exhibit 1. Defendant previously

1 deposited an amount sufficient to cover the backwages due with the Wage and Hour Di-
2 vision. The Secretary shall allocate and distribute the remittances, or the proceeds there-
3 of, after deducting the amount of legal deductions and forwarding said funds to the ap-
4 propriate agencies, to the persons named in the attached Exhibit 1, or to their estates if
5 that be necessary, in her sole discretion, and any money not so paid within a period of
6 three years from the date of its receipt, because of an inability to locate the proper per-
7 sons or because of their refusal to accept it, shall be deposited by the Secretary in a spe-
8 cial deposit account for payment to the proper persons and upon such inability to pay
9 within 3 years, shall then be deposited in the Treasury of the United States, as miscella-
10 neous receipts, pursuant to 29 U.S.C. § 216(c);

11 3) Within 45 days of the entry of this Judgment, Defendant shall hire an inde-
12 pendent third party monitor, acceptable to the Secretary, to monitor all of its sewing, cut-
13 ting, finishing, trimming and printing contractors (hereafter “contractor(s)”) to enforce
14 the contractors’ compliance with the FLSA. The monitor shall not be considered inde-
15 pendent if it represents either the manufacturer or contractor involved in this action in
16 any dealings with other parties or the Department of Labor.

17 The monitoring program shall include the following components:

18 A. Random and unannounced site visits to the contractor, at least on a
19 quarterly basis;

20 B. Review of the contractor’s timecards and payroll records on at least a
21 quarterly basis;

22 C. Private and confidential interviews of at least 20% of the current em-
23 ployees to determine the hours they work and the wages they are paid. The names
24 of the employees who are interviewed shall not be disclosed to the employer. At
25 least one half of the interviews shall be done off work premises;

26 D. Disclosure to the contractor and Defendant of any FLSA compliance is-
27 sues revealed by the monitoring without revealing the names of employees who
28 provided the information;

1 E. Review of the contractor's garment registration to determine if the con-
2 tractor is operating under a valid garment registration;

3 F. The Defendant shall not take any adverse action against any employee
4 who cooperates with the monitor or who provides information about violations of
5 the FLSA.

6 The monitor shall produce written reports of its findings which must address each
7 of the subjects required under this paragraph. Defendant shall maintain these reports for
8 a period of three years and supply copies to representatives of the Secretary of Labor up-
9 on their request.

10 4) Where the monitor identifies FLSA violations, Defendant shall ensure that
11 such violations are corrected within ten business days, including calculation and pay-
12 ment to employees of any backwages owed. Defendant shall notify the Department of
13 Labor when such violations are found and the corrective measures taken. The monitor
14 shall be able to access the contractor's bond (see paragraph 8, set forth below) if neces-
15 sary.

16 5) On at least a quarterly basis, Defendant shall conduct a pricing analysis of a
17 representative sample of garments produced at each contractor's shop to determine
18 whether the fees it pays to its contractors for their work on Defendant's goods are suffi-
19 cient in light of the wage requirements of the FLSA. The pricing analysis shall be con-
20 ducted using the pricing template attached as Exhibit 2. This analysis may be done by
21 the monitor, Defendant or an independent party. Defendant must incorporate the results
22 of this pricing analysis into the rates it pays to its contractors. Defendant shall maintain
23 documentation of these analyses and the measures it took as a result of these analyses for
24 a period of three years and provide it to representatives of the Secretary of Labor upon
25 their request;

26 6) Defendant shall require all contractors with whom it does business, who are
27 subject to the garment registration requirements of the State of California, to maintain a
28 valid garment registration. Defendant shall not do business with any garment contractor

1 without a valid registration;

2 7) Defendant shall require all sewing contractors with whom it does business
3 to provide it with copies of the contractors' time and payroll records no later than one
4 month after the period worked as reflected on the records; i.e., the contractor must sub-
5 mit the records for workweek ending 9/01/12 no later than 10/01/12;

6 8) Within 60 days of entry of this Judgment, Defendant shall require all sew-
7 ing contractors with whom it does business to have obtained a bond in the amount of
8 \$30,000 or one month's payroll, whichever is more. The bond must be available to pay
9 backwages to employees in the event violations are discovered by the Defendant, the
10 monitor, or the Department of Labor. The contractor must maintain this bond through-
11 out the duration of its work for the Defendant. After 60 days of entry of this Judgment,
12 Defendant shall not enter into any new contract with, extend any contract of or provide
13 any work to any sewing contractor who has not obtained the bond required under this
14 provision.

15 9) Defendant shall discuss the following subjects with the owner or top man-
16 agement official of all contractors with whom it does business in order to assess the con-
17 tractor's willingness and ability to understand and comply with the FLSA prior to enter-
18 ing into any agreement with the contractor for its services and on a quarterly basis there-
19 after. Defendant shall maintain for a period of three years documentation showing that
20 these subjects have been discussed and produce this documentation to representatives of
21 the Secretary of Labor upon their request:

22 A. The terms of the FLSA, including the contractor's obligation to pay
23 minimum wage and overtime and maintain accurate records of the hours worked
24 by and wages paid to its employees;

25 B. How to calculate overtime when employees are paid on a piece rate
26 basis. The attached Exhibit 3 contains examples of minimum wage and overtime
27 calculations;

28 C. Whether the proposed price terms are such that the contractor will be

1 able to comply with the FLSA's minimum wage and overtime requirements;

2 D. The contractor's willingness and ability, in light of the contractor's
3 prior compliance history, involvement in the industry and financial resources, to
4 understand and comply with the FLSA;

5 E. The contractor's obligation to inform Defendant immediately when-
6 ever the contractor is unable to meet any requirement of the FLSA;

7 F. The results of the monitoring and pricing analyses;

8 G. The contractor's obligation to maintain true and accurate payroll rec-
9 ords, and records of hours worked by all persons who work on goods produced for
10 the Defendant;

11 H. Defendant must notify its contractors that it shall not conduct busi-
12 ness with any contractor who is unwilling or unable to comply with the FLSA and
13 the terms of this Judgment.

14 Defendant shall supply copies of the documentation required by this paragraph to repre-
15 sentatives of the Secretary of Labor upon their request;

16 10) Defendant shall maintain for a period of three years copies of all cutting
17 tickets issued to their sewing contractors and supply copies of these records to represent-
18 atives of the Secretary of Labor upon their request;

19 11) Defendant shall maintain records of all shipments made to retailers for at
20 least three years from the date the shipment was made and supply copies of these records
21 to representatives of the Secretary of Labor upon their request;

22 12) Defendant shall supply all of its contractors with copies of the attached Ex-
23 hibit 4, which summarizes terms of this Judgment and the employees' rights under the
24 FLSA. The English, Spanish and Korean versions are attached. Defendant shall ensure
25 that its contractors distribute a copy of Exhibit 4 to each of their current employees with-
26 in 30 days of entry of this Judgment, in the employees' native languages, provide copies
27 to all new hires, and post a copy at each of its contractor's establishments

28 13) Defendant shall maintain records of all complaints it receives from employ-

ees of its contractors and produce them to representatives of the Secretary of Labor upon their request; and it is further

ORDERED that each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to attorneys' fees, which may be available under the Equal Access to Justice Act, as amended; and, it is further

ORDERED that this Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.

Dated: October 25, 2012



U.S. DISTRICT COURT JUDGE

For the Defendant:

The Defendant hereby appears, waives any defense herein, consents to the entry of this Judgment, and waives notice by the Clerk of Court:

By: _____
JOONHO JANG
President, CMR Clothing, Inc.

Date

Attorneys for the Defendant

LAW OFFICES OF J.J. KIM & ASSOCIATES

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Date

Attorneys for the Defendant

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2 For the Plaintiff:

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4 M. PATRICIA SMITH
5 Solicitor of Labor

6 JANET M. HEROLD
7 Regional Solicitor

8 DANIEL J. CHASEK
9 Associate Regional Solicitor

10
11 _____
12 SUSAN SELETSKY, Attorney
13 Attorneys for the Plaintiff
14 U.S. Department of Labor
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Date

Exhibit 1

Last Name	First Name	Period Covered	Gross Amount Due
Herrera	Bertoldo	07/27/2012 - 08/03/2012	\$ 71.25
Perez	Sandra	03/23/2012 – 08/03/2012	\$ 712.55
Benedeth	Luis	02/10/2012 – 08/03/2012	\$ 384.22
Chay	Micaela	02/10/2012 – 08/03/2012	\$ 1,491.35
Cos	Juana	02/10/2012 – 06/15/2012	\$ 1,836.71
Barrios	Jose	02/10/2012 – 08/03/2012	\$ 946.11
Gomez	Diego	02/10/2012 – 07/27/2012	\$ 870.09
Gonzales	Mario	02/10/2012 – 08/03/2012	\$ 513.40
Gonzales	Oseas	02/10/2012 – 08/03/2012	\$ 584.56
Gonzales	Victor	02/10/2012 – 08/03/2012	\$ 1,420.17
Hernandez	Antonio	02/10/2012 – 08/03/2012	\$ 764.89
Hernandez	Elmer	05/04/2012 – 08/03/2012	\$ 291.63
Hernandez	Estel	02/10/2012 – 08/03/2012	\$ 439.44
Hernandez	Rosa	02/10/2012 – 08/03/2012	\$ 1,884.48
Hernandez	Rubelino	02/10/2012 – 08/03/2012	\$ 431.75
Hernandez	Santos	02/10/2012 – 08/03/2012	\$ 1,438.63
Huinac	Maximo	02/10/2012 – 08/03/2012	\$ 1,614.19
Isabel	Veronica	02/10/2012 – 08/03/2012	\$ 1,205.54
Jr. Tomas	Andreas	02/10/2012 – 08/03/2012	\$ 728.27
Lopez	Domingo	02/10/2012 – 08/03/2012	\$ 422.59
Hernandez Lopez	Oscar	02/10/2012 – 08/03/2012	\$ 2,245.82
Luna	Fabiola	02/10/2012 – 08/03/2012	\$ 377.91
Maza	Norma	02/10/2012 – 08/03/2012	\$ 425.02

Ortiz	Blanca	06/01/2012 – 08/03/2012	\$ 681.82
Oxlaj	Maurisio	05/25/2012 – 07/06/2012	\$ 439.01
Paxtor	Alberto	02/10/2012 – 08/03/2012	\$ 2,055.98
Saquich	Juan	02/10/2012 – 08/03/2012	\$ 785.12
Vasques	Pedro	02/10/2012 – 08/03/2012	\$ 2,003.12
Vasquez	Rosaria	02/10/2012 – 08/03/2012	\$ 1,142.03
Zetina	Luis	02/10/2012 – 08/03/2012	\$ 402.10

Exhibit 2

	<u>Garment Pricing Template</u>				
Current State Minimum Wage					
\$8.00					
Garment Type					
Insert Garment Type for whole garments. Add a description if only partial production or finishing to describe the task.					
	Minutes and Seconds 1st Attempt	Minutes and Seconds 2nd Attempt	Minutes and Seconds 3rd Attempt	Average Minutes	
Start by having an average skilled worker produce one piece (or portion thereof) from the purchase order timing it with a stopwatch three times. Record the results to your right. If one of the attempts yields an extremely different result then disregard that attempt and make another sample. Finally, in the 4th column to the right add up the minutes and seconds for each attempt and divide by 3 to arrive at the Average Minutes to produce a garment in whole or part as required by the purchase order.	16.5	14.5	14	15	
				Pieces Per Hour One Worker	
Determine how many garments can be produced in one hour by dividing 60 minutes by the average number of minutes to produce a garment.				4	
				Labor Cost Per Garment Minimum Wage No Taxes or Insurance	
Divide the state minimum wage of \$8/hr by the number of garments that a worker can produce in one hour to determine the minimum wage labor cost.				\$2.00	
				Labor Cost Plus Taxes and Workers Compensation and Unemployment	

1	Estimated cost of workers compensation insurance, unemployment insurance and employer FICA is 30%					\$2.60
2						
3						
4						Pieces Per Day One Worker
5	Multiply the pieces per hour for one garment worker by 8 to determine how many pieces one worker can produce in one day.					32
6						
7						Worker Fatigue
8	The number of pieces per day per worker will be reduced by 10% to reflect 90% efficiency accounting for worker fatigue.					28.8
9						
10						The Number of Workers Assigned to Produce this Item
11	Input the number of workers					20
12						
13						Pieces Per Shop One Day
14	Multiply the number of garments produced by one worker per day by the number of workers producing that garment to estimate daily production.					576
15						
16						Total Pieces Required by Purchase Order
17	Enter the number of pieces per purchase order					3000
18						
19						Labor Cost Per Job Minimum Wage
20	Multiply the total number of pieces required by the Labor Cost Per Garment with taxes and insurance					\$7,800.00
21						
22						Number of 8 Hour Days to Finish the Order
23	Divide the total number of pieces required by the purchase order by the total pieces your shop can produce in one 8 hour day.					5.21
24						
25						Number of Days You Have to Produce the Order
26						
27	If this number is less than the number of 8 hour days you must factor in overtime. See the next row below for OT costs.					4
28						

1					Number of Garments Subject to Overtime
2					
3	Subtract the number of days you				
4	have to produce the order from the				
5	number of 8 hour days you have to				
6	produce the order. Next multiply that				696.00
7	number or fraction of a day by the				
8	number of garment you can pro-				
9	duce as a shop in one 8 hour day.				
10					Labor Cost Per Job Overtime
11					
12	Multiply the Labor Cost Plus Taxes,				
13	Workers Comp and Unemployment				
14	by 1.5. Next multiply this product by				
15	the Number of Garments Subject to				
16	Overtime to arrive at the total over-				
17	time cost.				\$2,714.40
18					
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25		Monthly Operat-			
26		ing Costs			
27		Equipment and	Rent or Mort-	Utilities	Average Monthly Costs
28		Supplies	gage		
29	Add the total operating costs and				
30	divide by 30 to arrive at the Average				
31	Monthly Costs	\$650.00	\$2,500.00	\$300.00	\$115.00
32					Operating Cost Per Job
33	Multiply the Average Monthly Cost				
34	by the number of days you have to				
35	produce the order and then divide				
36	product by the number of days in				
37	the month to compute the operating				
38	cost per job.				\$460.00
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Exhibit 3

Computing minimum wage and overtime on piecework:

Example 1:

Employee A produced \$200 in piecework and worked 40 hours

$$\$200 / 40 \text{ hours} = \$5.00 \text{ per hour}$$

$$\text{Difference} = \$7.25 - \$5.00 = \$2.25 \text{ per hour (underpaid)}$$

$$\$2.25 \text{ per hour} \times 40 \text{ hours} = \$90.00 \text{ minimum wage due}$$

Example 2:

Employee B produced \$425.00 in piecework and worked 50 hours

$$\$425 / 50 \text{ hours} = \$8.50 \text{ per hour}$$

$$\$8.50 \text{ per hour} \times 0.5 \text{ (half time)} = \$4.25 \text{ per hour due for OT hours}$$

$$\$4.25 \times 10 \text{ hours} = \$42.50 \text{ in overtime premium due}$$

Example 3:

Employee C produced \$365.00 in piecework and worked 50 hours

$$\$365 / 50 \text{ hours} = \$7.30 \text{ per hour}$$

$$\text{Difference in Reg. Rate} = \$8.00 \text{ (State minimum wage)} - \$7.30 = \$0.70 \text{ per hour}$$

$$\$0.70 \times 50 \text{ hours} = \$35.00 \text{ in regular rate due}$$

$$\$8.00 \times 0.5 \text{ (half time)} \times 10 \text{ hours of OT} = \$40.00 \text{ in overtime premium due}$$

Total Due: \$35.00 in regular rate and \$40.00 in overtime premium - \$75.00

Exhibit 4**LEGAL NOTICE TO ALL EMPLOYEES**

The **Fair Labor Standards Act** provides that all employees must be paid **minimum wage** for all hours worked. In addition, employees must be paid **overtime**, at a rate of time and one half their regular rate, for the hours they work over 40 in a workweek. All employees, whether they are paid **hourly** or on a **piece rate** basis are entitled to an overtime premium when they work over 40 hours.

To resolve a lawsuit brought by the **Department of Labor**, the **United States District Court** entered an Order forbidding **Color Me Red**, a garment manufacturer, from shipping goods sewn for its label on which employees were not paid the minimum wage or overtime required by the **Fair Labor Standards Act**.

Color Me Red wants to know if you are not being paid in accordance with the law. All employees who work in this establishment can help **Color Me Red** not to violate the Court's Order. You can call the U.S. Department of Labor, Wage and Hour Division, at (213) 894-6375 or **Color Me Red at (213) 749-3134.** Your name will not be disclosed.

NOTICIA LEGAL A TODOS LOS EMPLEADOS

La Ley de Normas Razonables de Trabajo determina que se les debe pagar a todos los empleados el sueldo mínimo por todas las horas que ellos trabajen. A la vez, también estipula que cada empleado que trabaje sobre tiempo, más de 40 horas en una semana laboral, se les deberá pagar a tiempo y medio de lo que ganen por cada hora de sobre tiempo trabajada. Todos los empleados, independientemente de que se les pague por hora o por pieza, tienen derecho a que se les pague prima sobre tiempo cuando trabajan más de 40 horas en una semana laboral.

Para resolver una demanda laboral iniciada por el Departamento Del Trabajo, la corte del Distrito de los Estados Unidos expidió una orden que prohíbe a **Color Me Red**, una fábrica de ropa, de enviar la producción de etiquetas a sus distribuidores si en la fabricación de dichos productos no se les pago a los empleados el sueldo mínimo o el sobre tiempo requerido por la Ley de Norma Razonables de Trabajo.

Color Me Red quiere saber si no se les esta pagando adecuadamente a fin de cumplir con la orden de la Corte. Si usted piensa que no se le pago de acuerdo a lo que la ley indica, por favor llama al Departamento del Trabajo de los Estados Unidos, División de Horas y Salarios al (213) 894-6375 o a **Color Me Red** al número **(213) 749-3134**. Su nombre se mantendrá confidencial.

모든 직원에게 법적 공지문

미연방의 공정 근로 기준법은 모든 직원들이 노동 시간에 따라 최소 임금을 받을 수 있도록 규정하고 있습니다.

그리고 또한, 일주일에 40 시간 이상 근무하였을 때 초과 시간에 1.5 배의 오버타임 (초과 근무 수당) 임금을 지급하게 규정하고 있습니다.

모든 직원은 40 시간 초과 근무했을 때, 시간제 임금을 받거나 생산 성과에 따라 임금을 받는 것에 상관없이 초과 근무 수당을 지급받을 수 있습니다.

노동청이 제소한 소송을 해결하기 위해 미 연방 지역 법원은 공정 근로 기준법에 의해 의무화된 최소 임금이나 초과 근무 수당을 직원에게 지불하지 않은 물품을 의류 제조 업체인 **Color Me Red** 가 발송하지 못하게 명령하였습니다.

이 공장에서 일하는 모든 직원은 **Color Me Red** 법정 명령을 준수 할 수 있게 도울 수 있습니다.

법에 따른 임금을 받고 있지 않다고 생각하신다면 지금 **Color Me Red, (213) 749-3134** 전화 하십시오.

아니면, 미연방 노동청, 임금과 시간 부처로 (213) 894-6375 전화 하십시오.

당신의 이름은 비밀로 보장됩니다.